

United States
Circuit Court of Appeals

For the Ninth Circuit. //

FRANCIS A. HOWARD,

Appellant,

vs.

E. H. ARCHER, THE HOWARD-VAUGHAN
CO., INC., a corporation, HOWARD F.
ZAHNO, also known as FRANCIS Z.
HOWARD, JAMES H. MOYER, MARY
M. VAUGHAN, JAMES WESTERVELT,
CHARLES S. MACKENZIE, THOMAS
MIDGLEY, Jr., JAMES I. BOWERS, M. J.
CRONIN and CHARLES LEVY,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Southern District of California,
Central Division

FILED

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PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Los Angeles, California. [1*]

In the District Court of the United States
 Southern District of California
 Central Division
 Civil Action No. 634 Y Civil

FRANCIS A. HOWARD,

Complainant,

vs.

E. H. ARCHER, THE HOWARD-VAUGHAN
 CO., INC., a corporation, HOWARD F.
 ZAHNO, also known as FRANCIS Z.
 HOWARD, JAMES H. MOYER, MARY
 M. VAUGHAN, JAMES WESTERVELT,
 CHARLES S. MACKENZIE, THOMAS
 MIDGLEY, Jr., JAMES I. BOWERS, M. J.
 CRONIN, and CHARLES LEVY, and fic-
 titious named defendants,

Defendants.

BILL OF COMPLAINT IN EQUITY FOR
 INVALIDATION OF PATENT, INVALI-
 DATION OF UNCONSTITUTIONAL CON-
 TRACTS, CONSPIRACY AND FRAUD,
 ETC.

Come now, Francis A. Howard and complains
 against the defendants and each of them for a
 cause of action as set forth in this bill of complaint
 in equity, as follows, to wit:

I.

That the complainant, Francis A. Howard, 342 Wilcox Building, Los Angeles, California, is a citizen of the United States of America.

II.

That the defendants are E. H. Archer, Long Beach, California, The Howard-Vaughan Co., Inc., a corporation, organized under the laws of the State of New York, with offices at 407 Sixth Street, Niagara Falls, New York, Howard F. Zahno also known as Francis Z. Howard, 2129 North Avenue, Niagara Falls, New York, James H. Moyer, 1825 Weston Avenue, Niagara Falls, New York, Mary M. Vaughan, 407 Sixth Street, Niagara Falls, New York, James Westervelt, 343 Twenty-first Place, Santa Monica, California, Charles S. MacKenzie, Room 2555, 120 Broadway, New York, Thomas Midgley, Jr., Dayton, Ohio, James I. Bowers, Somerville, New Jersey, [2] M. J. Cronin, 921 Bergen Avenue, Jersey City, New Jersey, Charles Levy, 18 East 41st Street, New York, New York, and fictitious named defendants, Does 1 to 25; John Does 1 to 25; Jane Does 1 to 25; Roe Corporation, a corporation, 1 to 25; Doe Corporation, a corporation, 1 to 25; Roe and Doe Corporations, corporations 1 to 50; A. Black and B. White, co-partners, doing business under the co-partnership name and style, and firm name of Black and White, 1 to 25; co-partnerships doing business as co-partnerships and partners under various names and

styles as firm names, 1 to 50; the said fictitious named defendants' correct names and addresses are unknown at this time and as soon as said fictitious names and addresses are correctly known, complainant will respectfully beg leave of the court to amend this bill of complaint in equity and insert the true and correct names and addresses of said fictitious named defendants.

III.

Complainant avers that for the jurisdiction of this bill of complaint in equity, that the defendants and each of them have caused and have further threatened irreparable losses, injuries and damages in excess of and over Three Thousand (\$3,000.00) Dollars over and above all costs and attorney fees in the prosecution of this action and that a federal question is involved in the matter of a patent and all rights in connection thereto, belonging to complainant, of which said rights complainant has been unlawfully deprived, and complainant has also been deprived of his constitutional rights unlawfully and rights under the federal laws of the United States of America as hereinafter set forth in this bill of complaint in equity.

IV.

Complainant further avers that he has always at all times and is now the President and a Director of the Board of Directors in the aforesaid Howard-Vaughan Co., Inc., a corporation. [3]

V.

Complainant, Francis A. Howard avers, that during the year 1915 or the early part of the year 1916, that complainant discovered that tetraethyl lead, when mixed in small quantities with any grade of gasoline, increased the efficiency of such gasoline when used as fuel for internal combustion engines, eliminated the knock in the motor and minimized the accumulation of carbon in the cylinders of the motor which occurred in the use of gasoline not so treated, and further discovered that tetraethyl lead when mixed with certain other chemicals or reagents in relatively certain quantities and under relatively certain conditions made a safe, efficient and cheap chemical compound, which, when added to any grade of gasoline, increased its efficiency when used as fuel for internal combustion engines, eliminated the knock in the motor and minimized the accumulation of carbon in the cylinders which attended the use as motor fuel of gasoline not so treated.

VI.

Complainant further avers, that said complainant Francis A. Howard wrote out a formula in conformity with his said discoveries. In addition to tetraethyl lead, the chief active ingredient or reagent employed in accomplishing the beneficial results as recited in paragraph 5 hereof, said formula contained several other ingredients or reagents some of which were for the purpose of preventing precipitation, enabling the tetraethyl

lead to act more efficiently and to bring about other beneficial results; some of which were intended to give to low grade gasolines an increased explosive force; one of which was for the sole purpose of giving to the mixture of said chemical compounds and to the gasoline impregnated with it, a distinctive color and some other of said ingredients were employed for the sole purpose of concealing the presence in said mixture of tetraethyl lead and other ingredients, without interfering with the effectiveness thereof [4] and to render impossible, complete analysis of said mixture of chemical compounds composing said formula and to prevent anyone from ascertaining by analysis that it contained tetraethyl lead.

VII.

Complainant further avers, that the said complainant Francis A. Howard, on or about the same time of making the aforesaid discovery that complainant invented a process and method of mixing said chemical combination, which rendered said mixing and mixture safe and aided the assimilation of the tetraethyl lead by the gasoline with which it was blended and made its reaction more potent in accomplishing the results hereinbefore described. That said formula is a SECRET FORMULA, and to the chemical compound made pursuant to it was given the name of "Vitigas" and under that name it was marketed and sold by complainant for several years thereafter.

VIII.

Complainant further avers, that on or about November 4, 1916, an application for registration of a certain trademark covering the use of the word "Vitigas" was filed in the United States Patent Office in the name of Howard-Vaughan corporation aforesaid Serial No. 99086, and said trademark, covering and giving to complainant the exclusive right to the use of the name "Vitigas" was duly registered in said United States Patent Office on the 24th day of April, 1917, and, further, that on November 25th, 1916, Complainant deposited in the United States Patent Office for registration a label, of which the following is the title: "Garage Vitigas" (for a chemical compound for use in gasoline), and the name was duly issued to said corporation by the Commissioner of Patents on the 13th day of February, 1917, as No. 19885; and further avers that on each and every package of aforesaid mixture of chemical compounds thereafter sold by complainant and said corporation, a label was attached bearing a facsimile of the label deposited as aforesaid for registration, so that the [5] public could always identify the goods manufactured and sold by complainant and said corporation and called "Vitigas", and distinguish the said product "Vitigas" from any other product purporting to accomplish the same or a like purpose as "Vitigas." The containers of said "Vitigas" so sold also contained thereon the directions for its use; and complainant further avers that the

registration of the said trademark "Vitigas" and said label was duly published as required by law.

IX.

Complainant further avers, that on January 25th, 1918, said complainant Francis A. Howard filed in the Office of Commissioner of Patents an application for Letters Patent of the United States on a "Process for the Extraction of Gasoline and Another Product From Kerosene", Serial No. 213,698, and said process patent was ultimately issued by the Commissioner of Patents on November 12th, 1918, as United States Letters Patent No. 1,284,687, containing four claims; and complainant further avers that the said PROCESS PATENT No. 1,284,687, provided a *a* means for recovering certain hydrocarbon distillates which were used as reagents in conjunction with, and to further and expedite the assimilation of certain other ingredients or reagents and lead compounds which composed the aforesaid secret formula for "Vitigas".

X.

Complainant further avers, that the defendant Thomas Midgley, Jr., fraudulently, wrongfully and unlawfully filed numerous applications to the Commissioner of Patents of the United States Patent Office for patent for various and sundry chemical compounds which contained one or more of the ingredients or chemical reagents which were contained in aforesaid secret formula of complainant

and which said defendant Thomas Midgley, Jr., knew were contained in said secret formula of complainant which was used for the production of "Vitigas" and said defendant [6] Thomas Midgley, Jr., falsely represented to said Commissioner of Patents of the Patent Office of the United States, that said chemical compounds and each of them was and were new and useful discoveries and inventions of said defendant Thomas Midgley, Jr., and thereby practiced fraud upon the said Patent Office of the United States and through and by said fraud executed by the said defendant defrauded complainant of his property and property rights; when the said defendant Thomas Midgley, Jr., well knew that none of said claims as made by said defendant for which applications for patents were made, as aforesaid, and on which applications were made for said patents and said patents were subsequently issued, by said defendant falsely stating that the discoveries by him was and were useful or could produce the results which said defendant Thomas Midgley, Jr., claimed in his said applications, when as a matter of fact, that none of the said claims for a patent by the said defendant Thomas Midgley, Jr., represented a discovery or invention by said defendant Thomas Midgley, Jr., because the said defendant Thomas Midgley, Jr., with malicious aforethought, conniving and scheming, gained entrance to the laboratory of complainant and deliberately and wilfully stole the information relative to the claims he made in applying for said

patents, and thereby had patents issued to him, through and by his practice of fraud upon the Patent Office of the United States and thereby defrauded complainant, and among the patents so applied for by the said defendant, Thomas Midgley, Jr., to the said Patent Office of the United States, were patents as follows: Application for patent on January 7th, 1918, which patent was granted as No. 1,296,832 issued March 11th, 1919, in which said patent he made the principal claim which was for benzol blended with Kerosene as an anti-knock preventer to be mixed with gasoline for use as a fuel for internal combustion engines; and another of said patents [7] so applied for on October 4th, 1918, which was issued was No. 1,491,998 issued April 29th, 1924, in which the principal claim was for benzine mixed with cyclohexane as a motor fuel; and another of said patents so applied for on October 15th, 1920, and which was issued was No. 1,501,568 issued July 15th, 1924, in which the principal claim was for aniline injection as an anti-knock resisting fluid; and on April 15th, 1922, filed an application for Letters Patent for what he wrongfully described as "Method and means for using motor fuels", for the first time set forth in the twenty-first claim, "A fuel for internal combustion engines comprising gasoline and tetraethyl lead", and patent thereon was issued to said defendant, Thomas Midgley, Jr., on February 23rd, 1926, as No. 1,573,846, and the said defendant, Thomas Midgley, Jr., very well knew that when he

filed said application for said patent and executed the inventor's oath provided by law, the said defendant knew that aforesaid complainant for many years before had used tetraethyl lead in the secret formula of said complainant for Vitigas as the chief and principal ingredient or reagent which when blended with gasoline and kerosene to stop the knock in motors, and the said defendant Thomas Midgley, Jr., practiced fraud upon the Patent Office of the United States and perjured himself when he filed applications for patents as the discoverer and inventor as set forth herein, and thereby by fraud and perjury deprived complainant of his property and property rights without jurisdiction and without due process of law.

XI.

That on or about January 15th, 1938, the defendants E. H. Archer and James Westervelt entered into a conspiracy and conspired with each other, and have continuously conspired up to and including the present time for the purpose of defrauding complainant of his property and property rights without [8] due process of law.

XII.

Complainant further avers, that the defendants, Howard-Vaughan Co., Inc., corporation, Howard F. Zahno also known as Francis Z. Howard, James H. Moyer and Mary M. Vaughan, directors of said corporation, and defendant James Westervelt, con-

spired in a conspiracy to defraud complainant and defendant Charles S. MacKenzie also conspired in a conspiracy with said defendants as hereinafter set forth for the purpose of defrauding complainant, by holding numerous and various directors meetings of said corporation, and did not notify complainant that said meetings were to be held, disregarding the fact that complainant Francis A. Howard was at all times and is now a President and Director in said corporation, and said meetings of the said directors of said corporation were held at Niagara Falls, New York, on dates as follows: December 15th, 1937; December 28th, 1937; January 10th, 1938; February 4th and February 17th, 1938; March 16th, 1938; and on or about during the month of February, 1939, and the said meetings were all held purposely by the said defendants for the purpose of making a fraudulent buildup to defraud complainant of his property and property rights in the execution of said conspiracy and fraud, thereby defrauding complainant without due process of law of his constitutional rights which is accorded to complainant as an inventor in the discovery of scientific and useful arts in the United States of America under the citizenship of said complainant as an American citizen of the United States.

XIII.

Complainant further avers, that on or about December 15th, 1937, the defendants Zahno also known as Francis Z. Howard, James H. Moyer, and Mary

M. Vaughan, as directors of aforesaid defendant Howard-Vaughan Co., Inc., a corporation, and James Westervelt, defendant herein, conspired in a conspiracy, and notified complain- [9] ant that a directors meeting of said corporation to be held on December 15th, 1937, and when complainant arrived at the place in Niagara Falls, New York, where said directors meeting was to be held, the said defendant James Westervelt advised the said directors not to hold any meeting and would not allow the said directors hold any meeting, and the said directors did not hold any meeting, but regardless of this fact, sometime after there was placed on the minute book of said corporation a set of minutes as of a directors meeting having been held on the said date of December 15th, 1937, and through and by the conspiracy and fraud of said defendants relative to said directors meeting, complainant was denied the right to sit in a meeting and was not notified of the meeting that purportedly took place on December 15th, 1937, in the fraudulent manner as herein described, which said conspiracy and fraud was perpetrated against complainant for the purpose to defraud complainant of his property and property rights and the said defendants have defrauded complainant of his property and property rights through and by conspiracy and fraud without due process of law, by the said fraudulent meeting of the said directors as herein set forth.

XIV.

Complainant further avers, that on or about December 28th, 1937, the defendants Howard F. Zahno also known as Francis Z. Howard, James H. Moyer and Mary M. Vaughan, directors in said corporation Howard-Vaughan Co., Inc., and as directors of said corporation, held a directors meeting at Niagara Falls, N. Y., without notifying complainant, and a letter from defendant James Westervelt dated December 24th, 1937, was read and said letter referred to a contract dated October 2, 1936, wherein one Fred E. Stivers (deceased December 7, 1937) and James Westervelt, attorneys-at-law, said contract retaining said Stivers and Westervelt to act as counsel in all matters for said Howard-[10] Vaughan Co., Inc., a corporation, in connection with other certain matters, and the said contract dated October 2, 1936, was procured by misrepresentation and fraud from complainant as President of said corporation, by the said Stivers and Westervelt, and said contract was at no time approved or authorized or adopted by the directors of said corporation, but however a fraudulent attempt was made to approve said contract by the said defendant directors of said defendant corporation, and said defendant James Westervelt, and said defendant directors of said corporation, entered into a conspiracy and conspired against the complainant hereof, and the said defendant Westervelt and said defendant directors held the said directors meeting of December 28th, 1937, without

notifying complainant, and in the said fraudulent directors meeting fraudulently attempted to approve the said contract dated October 2, 1936, and thereby defraud complainant through and by the conspiracy herein set forth for the purpose of fraud and deprive complainant of his property and property rights consisting of such rights as granted by the United States of America, as herein set forth in this bill of complaint in equity and defraud complainant of his patent, patent rights, and secret formula and secret formula rights for a chemical compound for use in gasoline, and thereby defraud complainant without jurisdiction and without due process of law, and also defraud complainant further by and through the participation of defendant Charles S. MacKenzie with said defendant James Westervelt in said conspiracy and fraud practiced by said defendants against complainant as herein set forth which has been also participated in by the directors of said corporation to deprive complainant of his patent and patent rights and secret formula and secret formula rights such as have been granted to complainant by the United States of America for the purpose of the progress of science and art as discovered and invented by complainant, which carry no provision for such fraud as has been practiced against complainant. [11]

XV.

Complainant further avers, that the defendants Howard F. Zahno also known as Francis Z. How-

ard, James H. Moyer and Mary M. Vaughan as directors of aforesaid Howard-Vaughan Co., Inc., a corporation, held a directors meeting on or about January 10th, 1938, and entered into a conspiracy with *with* defendants James Westervelt and Charles S. MacKenzie, and did not notify complainant that said directors meeting was to be held, and at said meeting provided that the former counsel for the said corporation, should be notified to turn over all property held by said former counsel to aforesaid defendants Westervelt and Charles S. MacKenzie as they were now the counsel for said corporation (the former counsel were Webster and Garside, attorneys-at-law, New York City, N. Y.). The said notification was given to the said former counsel for the said corporation, and in this manner, the said defendants Westervelt and MacKenzie conspiring in a conspiracy with the said defendant directors, procured from *from* the said law-firm of Webster and Garside, property consisting of personal property belonging to complainant, such as various kinds of documents, and papers, and thereby the said defendants and each of them procured and deprived complainant of his personal property by conspiracy and fraud, without jurisdiction and without due process of law.

XVI.

Complainant further avers, that on or about February 4th, 1938, the defendants Howard F. Zahno also known as Francis Z. Howard, James H.

Moyer and Mary M. Vaughan, as directors of aforesaid Howard-Vaughan Co., Inc., a corporation, held a directors meeting of said corporation, and did not notify complainant of said meeting to be held, and have always refused and continue to refuse to allow complainant to see the minutes of said meeting and the said defendants and the defendants James Westervelt [12] and Charles S. MacKenzie, and each of them, the said defendants, conspired in a conspiracy to defraud complainant of his property and property rights as described herein in this bill of complaint in equity and through conspiracy and fraud have deprived and denied complainant his constitutional rights without jurisdiction and without due process of law.

XVII.

Complainant further avers, that on or about February 17th, 1938, that the aforesaid defendant directors of aforesaid corporation and the defendants James Westervelt and Charles S. MacKenzie entered into a conspiracy to defraud complainant by holding a *a* directors meeting and did not notify the complainant and fraudulently associated other counsel with *with* the said Westervelt and MacKenzie as additional counsel for the aforesaid Howard-Vaughan Co., Inc., a corporation, for the sole purpose of further furthering the perpetration of the fraud as conspired and entered into by said defendants, and the furtherance of said fraud will be set forth hereinafter by the facts as shown

wherein the said Westvelter and Mackenzie have not only fraudulently represented the matter to the new counsel as additional counsel in a matter the said Westervelt and MacKenzie have fraudulently represented to the court and before the court in the State of New Jersey, for the sole purpose to defraud complainant of his property and property rights which are fully described in this bill of complaint in equity, which have been granted to complainant by the United States of America as it also provided for the complainant to promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries, and the conspiracy and fraud perpetrated by the said defendants against the said complainant has denied to the complainant any such right as granted by the United States of America to said complainant.

[13]

XVIII.

Complainant further avers, that on or about March 16th, 1938, the aforesaid defendant directors of said Howard-Vaughan Co., Inc., a corporation, and the defendants James Westervelt, Charles S. MacKenzie, entered into a conspiracy to defraud complainant by holding a directors meeting without notifying complainant of said meeting to be held, and said defendants through and by their conspiracy and fraud, held the said meeting for the purpose to defraud complainant and fraudulently authorized the making and execution of an un-

constitutional contract purported to be a trust agreement, and fraudulently appointed trustees in said trust agreement, for the sole purpose to fraudulently, illegally and unconstitutionally confiscate the property of complainant in the form of documents and corporation stock certificates belonging to complainant and did confiscate said property as specified herein, and in the appointment of said trustees in the said trust agreement the said defendants not only practiced fraud upon the complainant but also upon the trustees of said trust agreement, by fraudulently representing to said trustees that the said unconstitutional trust agreement was authorized by a lawful and proper meeting of the said directors of the said corporation, when as matter of fact the very meeting of the directors which authorized said trust agreement permeated with fraud itself, and therefore, the said directors meeting could not authorize anything much less a trust agreement to illegally, fraudulently and unconstitutionally confiscate the said property of complainant, and thereby the said defendants fraudulently deceived the said trustees and also deprived complainant of his property and property rights without jurisdiction and without due process of law, and at this time through and by the unconstitutional trust agreement which has been established upon a foundation of conspiracy and fraud, the said trustees are holding the afore-said property of complainant [14] without jurisdiction and without due process of law.

XIX.

Complainant further avers, that on or about March 16th, 1938, the aforesaid defendant directors of the aforesaid Howard-Vaughan Co., Inc., a corporation, and James Westervelt and Charles S. MacKenzie, and each of them entered into a conspiracy to defraud complainant by holding a directors meeting and did not notify complainant of said meeting to be held, for the purpose to defraud complainant of his property hereinbefore described and thereby deprive complainant of his property and property rights without jurisdiction and without due process of law.

XX.

Complainant further avers, that on or about February 25th, 1939, that an agreement was made and entered into by between parties as follows: The Howard-Vaughan Co., Inc., a corporation of the State of New York, with principal place of business and principal office at Niagara Falls, New York, as party of the first part; Mary Vaughan, Francis Z. Howard and James H. Moyer, all of Niagara Falls, New York, as parties of the second part; James Westervelt of Santa Monica, California, and Charles S. MacKenzie, of Bound Brook, New Jersey, as parties of the third part; Dr. Francis A. Howard, of Jersey City, New Jersey, as party of the fourth part; Research Institute For Applied Science, Inc., party of the fifth part; and James I. Bowers, M. J. Cronin and Charles Levy,

as Trustees under the escrow agreement referred to, as parties of the sixth part; complainant avers that the said agreement is founded upon the conspiracy and fraud of the defendants as set forth herein and therefore, the said agreement is in itself the result of the conspiracy and fraud that has been built up by the various averments herein and therefore, the said agreement is an absolute fraud and of the principle of unconstitutional confiscation of [15] property and property rights of complainant without jurisdiction and without due process of law.

XXI.

Complainant further avers, that on or about the 4th day of March, 1939, that an agreement of retainer was made and entered into by and between Dr. Francis A. Howard of Jersey City, New Jersey, and Charles Levy, Attorney, New York City, New York, and Maurice J. Cronin, an attorney, of Jersey City, New Jersey, and said agreement having been made under the conditions which have been averred in this bill of complaint in equity, it would be impossible to operate and prosecute any action in any court under said contract, because the said contract is resting upon a foundation of fraud created by the conspiracy of the defendants as mentioned and set forth in this bill of complaint in equity, as the aforesaid defendants who are charged with conspiracy and fraud have misrepresented the true and correct situation to the said Maurice J. Cronin and Charles Levy, as the foundation upon

which this contract rests is a conspiracy and fraud established by the averments as contained herein for the purpose to defraud complainant of his property and property rights without jurisdiction in any court and without due process of law.

XXII.

Complainant further avers, that on or about the 25th day of February, 1939, that an agreement was made and entered into by and between Dr. Francis A. Howard and Research Institute For Applied Science, Inc., a domestic corporation, of the State of New York, and James I. Bowers, of Somerville, New Jersey, and Maurice J. Cronin, of Jersey City, New Jersey, and Charles Levy, of New York City, New York, for the purpose of establishing a trust estate under said agreement purported to be a trust agreement, when in fact the said agreement is not a trust agreement, but instead is an unconstitutional contract founded upon the conspiracy and fraud of the aforesaid defendants charged with [16] conspiracy and fraud, namely, the directors who are defendants, James Westervelt and Charles S. MacKenzie, which said defendants misrepresented the true facts to the trustees in said trust agreement, and through the said trust agreement complainant was deprived of his property by and through an illegal and unconstitutional confiscation of said property which is described as follows:

(a) Certificate #3, Class B stock of The Howard-Vaughan Co. Inc. for 450 shares presently

owned in the name of Research Institute for Applied Science, Inc.

(b) Certificate #161, Class A common stock of The Howard-Vaughan Co. Inc. for 50 shares originally issued to R. F. Howard, and subsequently on September 1st, 1938, duly assigned by said R. F. Howard to Francis A. Howard.

(c) Certificate #105, Class A common stock of The Howard-Vaughan Co. Inc. for 200 shares in the name of Research Institute for Applied Science, Inc.

(d) Certificate #139, Class A common stock of The Howard-Vaughan Co. Inc. for 275 shares in the name of Francis A. Howard.

(e) Certificate #163, Class A common stock of The Howard-Vaughan Co. Inc. for 106 shares in the name of Francis A. Howard.

(f) Certificate #4, Class B, common stock of The Howard-Vaughan Co. Inc. for 10 shares in the name of Francis A. Howard.

And the said agreement of trust unconstitutionally provides such provisions as are all unconstitutional, because said purported trust agreement is a document of unconstitutional deprivation and confiscation of not only complainants property and property rights, but his citizenship rights as well, also personal property in the form of documents belonging to complainant have been taken by said document purported to be a trust agreement when in fact it is not a document that is permissible under the constitutional rights of complainant be-

cause the said purported trust agreement is founded upon a foundation of conspiracy and fraud which is set forth in this complaint in equity and your complainant hereof has been defrauded of his property and property rights by each and every movement that was made by the aforesaid defendants who have been charged with conspiracy and fraud in this bill of [17] complaint in equity, for the sole purpose of defrauding complainant of his property, therefore, any action which might be prosecuted under any of the aforesaid fraudulent documents purporting to give any such authority, would not have any jurisdiction in any court in the United States of America, as it is an illegal unconstitutional foundation founded and built up on the foundation of conspiracy and fraud to unconstitutionally defraud complainant of his property and property rights without jurisdiction and without due process of law, and any attempt to prosecute an action in any court under such an illegal and fraudulent set-up would be nothing short of practicing fraud against the complainant hereof but also upon the court as well for the purpose to defraud complainant of his property and property rights without jurisdiction and without due process of law.

XXIII.

Complainant further avers, that at this time of filing this bill of complaint in equity, that the aforesaid defendants, Howard F. Zahno also known as Francis Z. Howard, James H. Moyer, Mary M.

Vaughan, as directors of aforesaid Howard-Vaughan Co., Inc., a corporation, and James Westervelt and Charles S. MacKenzie, misrepresented the facts to aforesaid James I. Bowers, M. J. Cronin and Charles Levy, as complainant feels at this time, that had the said Bowers, Cronin and Levy known of the fraudulent conspiracy and fraud of the said five defendants, that the said Bowers, Cronin and Levy would not have become a party to the various contracts and agreements in which they have become parties, and complainant have named said Bowers, Cronin and Levy, as defendants for the purpose of eliminating all contracts and procedures signed by the said Bowers, Cronin and Levy, which have come into existence and being upon the fraudulent representations of the said Defendant directors of said corporation and the said defendants, Westervelt and MacKenzie, to defraud complainant of his property and property rights. [18]

XXIV.

Complainant further avers, that on or about during the month of June 1938 that the defendants, Howard F. Zahno also known as Francis Z. Howard, James H. Moyer, Mary M. Vaughan, as directors of aforesaid Howard-Vaughan Co., Inc., a corporation, and defendants James Westervelt and Charles S. MacKenzie, caused to be filed in Chancery of New Jersey an action under the title of The Howard-Vaughan Co., Inc., a corporation,

against various and numerous defendants, which said action is founded upon the conspiracy and fraud as set forth in this bill of complaint in equity, and the said defendants, thereby expect to further illegally and unconstitutionally confiscate the property and property rights of complainant without jurisdiction and without due process of law, and further cause to complainant irreparable losses, injuries and damages without due process of law.

XXV.

Complainant further avers, that the aforesaid conspiracy and fraud as set forth in this bill of complaint in equity, have caused complainant irreparable losses, injuries and damages, and that further losses, injuries and damages are threatened by the aforesaid conspiring defendants, which would cause irreparable losses, injuries and damages, and thereby bring into a situation in which it would be doubtful if any chance to recover in any manner from the irreparable losses, injuries and damages which would be caused to complainant without jurisdiction and without due process of law, and complainant as an inventor and discoverer of useful and scientific arts would be unconstitutionally deprived of his property and property rights as granted by the United States of America and its agencies which protect inventors and discoverers and their inventions and discoveries against the conspiracy and fraud of the aforesaid

defendants who have perpetrated said fraud as set forth in this bill of complaint in equity. [19]

XXVI.

Complainant further avers, that on or about October 6th, 1934, that the directors of The Howard-Vaughan Co., Inc., a corporation, held a meeting of the said directors, and said meeting was held at Niagara Falls, New York, and at said meeting a resolution was passed wherein the secret formula of complainant which is used for purposes hereinbefore stated, wherein said secret formula was transferred and assigned to the said corporation for the purpose of effecting a sale of the entire assets of said corporation with the understanding that if the said sale was not consummated that the said secret formula would be assigned and reassigned back to complainant, but when the said sale did fail to consummate and was not made as proposed, complainant then requested the said directors to reassign said secret formula to complainant and said request has been made on several occasions and numerous times up to and including recent times and in each and every instance the said directors have refused to reassign said secret formula to complainant and in the year of 1936 when the aforesaid defendant James Westervelt first made his appearance in the aforesaid and said corporation as counsel and advisor to the said board of directors, and after said Westervelt had been told and informed of the circumstance surrounding the said

secret formula, he advised the said directors not to reassign the said secret formula to complainant and the said directors and said Westervelt conspired in a conspiracy to defraud complainant of his secret formula and have continually after various and many requests and demands to said directors and said Westervelt to have them reassign said secret formula to complainant the said defendants have in each and every instance refused to reassign and deliver the said secret formula to complainant and thereby through said conspiracy and fraud of said defendants defraud complainant of his property and property rights which have been granted to complainant by the United States of America. [20]

Wherefore, complainant respectfully prays for process and judgment as follows, to wit:

1. That the court adjudge and decree as being invalid, null, void, cancelled and of no force and effect, just the same as if non-existent the following patents which were procured by aforesaid defendant Thomas Midgley, Jr., which said patents are as follows: Patent No. 1,491,998 issued April 29th, 1924;

Patent No. 1,501,568 issued July 15th, 1924;

Patent No. 1,573,846 issued February 23rd, 1926; Said patents were issued by the United States Patent Office to Thomas Midgley, Jr., defendant herein, upon his fraud representation.

2. That the directors meetings held as set forth in the bill of complaint, by the directors of the

Howard-Vaughan Co., Inc., a corporation, be adjudged and decreed as null and void and of no force and effect whatsoever upon the grounds of fraud.

3. That the contract dated October 2, 1936, between Defendant James Westervelt and Fred E. Stivers and the Howard-Vaughan Co., Inc., a corporation, or any other contract held with said Westervelt with said corporation or the complainant be adjudged and decreed as being invalid, null and void and cancelled and of no force and effect whatsoever, a fraud.

4. That the agreement made and entered into on or about February 25th, 1939, by and between the Howard-Vaughan Co., Inc., party of first part; Mary Vaughan, Francis Z. Howard, and James H. Moyer, parties of the second part; James Westervelt, and Charles S. MacKenzie, parties of the third part; Dr. Francis A. H. Howard, party of the fourth part; Research Institute For Applied Science, Inc., party of the fifth part; and James I. Bowers, M. J. Cronin and Charles Levy, as Trustees, as parties of the sixth part; That the court adjudge and decree said agreement a fraud, null and void, cancelled and of no force and effect whatsoever, as being the result of a conspiracy and fraud. [21]

5. That the agreement made and entered into on or about this 4th day of March, 1939, by and between Dr. Francis A. Howard, Maurice J. Cronin and Charles Levy, be adjudged and decreed as null

and void, cancelled and of no force and effect, just the same as if non-existent, as being the result of a conspiracy and fraud as set forth in bill of complaint in equity hereof.

6. That the agreement made and entered into on or about the 25th day of February, 1939, by and between Dr. Francis A. Howard and Research Institute For Applied Science, Inc., James I. Bowers, Maurice J. Cronin, and Charles Levy, as a purported trust agreement, be adjudged and decreed invalid, null and void, and cancelled and of no force and effect whatsoever, and as being unconstitutional and the result of a conspiracy and fraud.

7. That the defendants and each of them be ordered to return to complainant all property of any and all kinds that they are holding in their possession which belongs to complainant.

8. That the complainant be given judgment for all costs, including court costs and attorney's fees arising and accruing in the prosecution of this cause and action.

Wherefore, complainant prays for such other aid, order, orders, judgment, judgments, and relief as the court may deem just and proper in the premises.

Dated: Los Angeles, California, October 28, 1939.

FRANCIS A. HOWARD

Complainant in Propria Persona.

United States of America
State of California
County of Los Angeles—ss.

Francis A. Howard, being by me first duly sworn, deposes and says: That he is the complainant in the above entitled matter, that he has read the foregoing Bill of Complaint in Equity and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

FRANCIS A. HOWARD,
Complainant.

Subscribed and sworn to before me this 30th day of October, 1939.

[Notarial Seal] HARRIET M. ERMOLD
Notary Public, in and for the County of Los Angeles, State of California.

My Commission Expires Sept. 1, 1941.

[Endorsed]: Filed Oct. 30, 1939. [23]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS E. H. ARCHER,
THE HOWARD-VAUGHAN CO., INC., AND
JAMES WESTERVELT.

Come now the defendants E. H. Archer, The Howard-Vaughan Co., Inc., and James Westervelt, and for Their Answer to the Bill of Complaint

herein, each for himself or itself, admit, deny and allege as follows:

I.

Answering Paragraph I, allege that complainant is a resident of the City of Hoboken, New Jersey, and has been such resident for over one year last past, and that he has no legal residence or place of residence or abode within the Southern District of California. And in this connection defendants further allege that they have made great efforts within the month or six weeks last past, to locate said complainant in order to serve him with certain legal process, but have been informed by the Sheriff of Los Angeles County that he cannot be found therein, and by their investigator, Charles J. Siems, that said complainant is in hiding, and for that reason so allege.

II.

Deny each and every allegation in Paragraph III.

III.

Admit, and adopt as their own, all and singular the allegations contained in Paragraphs IV, V and VI of said Complaint. [25]

IV.

Admit, and adopt as their own, all and singular the allegations contained in Paragraphs VII, VIII and IX of said complaint, except that they allege that "Vitagas", and not "Vitigas" was the name

adopted and used by said The Howard-Vaughan Co., Inc., and by complainant insofar as he had any power or right to use the same, for the formula described in the Bill of Complaint herein and in said last named paragraphs thereof and for the chemical compound made pursuant thereto. And in this connection these defendants allege that the said secret formula, for a chemical compound called "Vitagas" described in the Bill herein, and the process for compounding same, was by said complainant assigned to defendant, The Howard-Vaughan Co., Inc., in June, 1916 at the time of its incorporation, for a valuable consideration in stock of said corporation then and there issued to him, said complainant, most of which stock complainant still holds and owns or claims to own. And these defendants beg leave to draw to this Court's particular attention the allegations in Paragraph VIII of the Bill of Complaint herein to the effect that, during 1916 and 1917 complainant, acting in the name of defendant herein, The Howard-Vaughan Co., Inc., filed applications with the U. S. Commissioner of Patents for trademark and registered label covering the use by said defendant corporation of the trade name adopted for said formula and chemical compound.

V.

Further answering said paragraphs IV to IX inclusive of the Bill of Complaint and in bar of this action, these defendants further allege that in

January, 1938, complainant filed an action in Chancery of New Jersey, numbered 120-704, in which he was complainant and the defendants herein, The Howard-Vaughan Co., Inc., and Thomas Midgley, Jr., among others were defendants; that in his Bill of Complaint therein this complainant alleged substantially the same facts as are set forth in Paragraphs IV to IX of the Bill herein, and further alleged that he was the owner of said secret formula, chemical compound and process; that, subsequently defendant herein, The Howard-Vaughan Co., Inc., filed a petition in said action No. 120-704, denying that complainant was such [26] owner, expressly alleging that it, said The Howard-Vaughan Co., Inc., was the owner by assignment from complainant, as herein alleged, and praying that said action No. 120-704 be dismissed on the merits and that complainant be enjoined and forever restrained from again asserting such ownership in himself and from bringing any action against the defendants therein named or any of them based upon such claim of ownership; and that thereafter, after said complainant and defendant had been fully heard and had introduced oral testimony and documentary evidence, the said Court of Chancery of New Jersey, on May 4th, 1938, duly made its Order dismissing the said action so brought by this complainant, finding expressly that The Howard-Vaughan Co., Inc., and not the Complainant, was the owner of said "secret formula for a chemical compound called 'Vitagas',

and of the process for compounding same, and that The Howard-Vaughan Co., Inc., a corporation of the State of New York, has the sole right to maintain any action or proceeding based upon such ownership", and enjoining said complainant "from bringing, prosecuting or maintaining any action in this court or in any court in this or any other jurisdiction" against any of the defendants named in said action, "upon any cause of action based or founded upon any claim of ownership by" him of the aforesaid secret formula or process; all of which more fully appears by said Order a duly exemplified copy whereof these defendants are ready to produce to this Court at any time.

VI.

Allege that neither these defendants nor any of them have or has any knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph X of the Complaint herein and, base their denial on that ground deny the same and each and all thereof, except that they admit that Thomas Midgley, Jr., practised fraud upon the Patent Office and perjured himself as therein alleged, but specifically deny that complainant was thereby deprived of anything.

VII.

Deny, generally and specifically, each and every allegation contained in Paragraphs XI, XII and XIII of the Bill of Complaint, except that they admit that directors' meetings of defendant corpo-

ration were held on or about the dates mentioned in said paragraphs, but expressly deny that any of said meetings was or were called or held without due and proper notice to said complainant or that any formality required by law or the By-Laws of the corporation was omitted or dispensed with, and specifically deny that any of these defendants ever conspired together for any purpose or that any of the several conspiracies sought to be described in and by said paragraphs ever existed or were ever in the contemplation or minds of any of these defendants or, as they are credibly informed and believe, and therefore allege, in the contemplation or minds of any of the other defendants herein; and further deny that complainant has been deprived of any right, property, asset or thing of value, by virtue of anything alleged in said Bill of Complaint.

VIII.

Deny, generally and specifically, all and singular the allegations in Paragraph XIV of the Bill herein, and expressly allege that the contract of October 2, 1936, was drafted, composed and personally typed by complainant himself, and that same was thereafter approved by the directors of defendant corporation at a meeting duly called according to law and the By-Laws of said defendant, of which meeting complainant had, and expressly admitted having, full, due and legal notice in writing.

IX.

Deny, generally and specifically, each and every allegation contained in Paragraphs XV, XVI and

XVII of said Bill of Complaint and expressly deny that any of the so-called conspiracies in said paragraphs attempted to be described ever existed or had any being except in the fruitful imagination of the complainant, and further deny that he was ever deprived of anything by any action, direct or indirect of any of the defendants.

X.

Deny, generally and specifically each and every allegation in paragraphs XVIII, XIX, XX, XXI and XXII of said Bill, except that they admit that a retainer agreement was signed as described in said paragraph XXI, and further answering so far as humanly possible the jumbled allegations [28] therein contained, these defendants allege that the several allegations contained in said five paragraphs all purport to refer to, or describe, an allegedly "unconstitutional" contract or trust agreement, and hereby allege that the facts concerning the same are as follows:

On or about January 30 or 31, 1938, and concurrently with the filing by him in Chancery of New Jersey of the aforesaid action No. 120-704, complainant served on the defendant The Howard-Vaughan Co., Inc., a unilateral notice of revocation or rescission of the assignment in 1916 by him to said corporation of the secret formula and the chemical compound made in conformity therewith and process for compounding same, called "Vita-gas", and called a stockholders' meeting of said

corporation for the purpose of ousting the three directors thereof, other than himself, defendants Vaughan, Moyer and Zahno, or Howard. Said corporation and said three directors, defendants herein, thereupon filed in the Supreme Court of New York in and for Niagara County an action against the said Francis A. Howard, complainant herein. In their complaint therein they alleged that the said corporation was, and had since 1916 been, the owner, by due assignment from him, said Francis A. Howard, of said secret formula, compound and process; that the said corporation had retained defendant James Westervelt to bring suit on its behalf against Standard Oil Co. of New Jersey, General Motors Corporation, E. I. DuPont de Nemours Corporation, Ethyl Gasoline Corporation, et al, for damages in an immense sum for the theft by said corporations last named of the aforesaid secret process and subsequently obtaining alleged U. S. Letters Patent for Ethyl Gas, so-called, same being identical with "Vitagas"; that complainant wrongfully refused to assist in carrying out the will of a majority of the directors of said The Howard-Vaughan Co., Inc., or to co-operate in any way with its attorneys in filing or maintaining said proposed action; that he had wrongfully appropriated to his own use a large quantity of the stock of said The Howard-Vaughan Co., Inc., and had filed said action No. 120-704 in New Jer- [29] sey in his own name, claiming as against said corporation, his assignee, the ownership of said formula, compound

and process; and that he had called said stockholders' meeting in furtherance of his said scheme to despoil said The Howard-Vaughan Co., Inc., and its stockholders of the very property which he had assigned to it; and praying that so much of the stock in said corporation as he should be found to have stolen or wrongfully acquired be restored to its true owners and that meanwhile he be enjoined and restrained from voting any of his stock in any corporate meeting. An order to show cause and restraining order was accordingly issued and said complainant thereafter continuously remained in hiding to avoid service of any process.

Subsequently, and after the entry of the order of May 4th, 1938, which is described in paragraph V hereof, said Francis A. Howard, at the suggestion of defendant herein, Charles Levy, who had long been his personal attorney, and who had acted as attorney in said action in Niagara County, New York for said Howard's co-defendant, Research Institute for Applied Science, really his alter ego and dummy corporation, retained the defendant herein, M. J. Cronin, to negotiate a settlement of said Niagara County action with the defendants herein, Mackenzie and Westervelt, as attorneys for defendants Vaughan, Moyer, Zahno and The Howard-Vaughan Co., Inc. After months of intensive negotiations and conferences between said attorneys, complainant and correspondence with plaintiffs in said action in Niagara County, the defendants Vaughan, Moyer, Zahno and The Howard-Vaughan

Co., Inc., and after several times drafting and re-drafting it, the contract which Complainant now dubs unconstitutional and fraudulent was entered into by all the parties deliberately, as the best means of composing their differences and successfully carrying on the litigation in New Jersey against the Standard Oil, General Motors and DuPont interests. During the negotiations leading up to, and in the actual execution of said contract, or trust agreement, the said Francis A. Howard was at all times forcefully and ably represented by the said M. J. Cronin, an able member of the New Jersey Bar of high repute, and by the said Charles Levy, a highly reputable and experienced member of the New York Bar, [30] and every phase of Complainant's rights in the premises was painstakingly and thoroughly explored by them, in frequent long and arduous conferences with defendants Mackenzie and Westervelt. No misrepresentation whatever was practised by the latter two named defendants upon said Cronin or Levy, nor was a single fact, no matter how remotely pertinent to the matters in hand, withheld from them. Said contract was executed as of February 25, 1939, and duly ratified and approved at a meeting of directors of The Howard-Vaughan Co., Inc., duly called and held on or about March 10, 1939, due notice whereof was given said complainant, and the action taken by said directors was approved in advance by complainant's said attorneys, the defendants Cronin and Levy. Throughout the entire matter, as these answering defendants

are credibly informed and believe and therefore allege, no possible reasonable precaution to safeguard complainant's rights, or the rights of the several other parties to said contract was omitted. And these defendants specifically and expressly deny that any of the defendants herein entered into any of the several different conspiracies alleged in said several paragraphs XVIII to XXII of the Bill herein, or did any act or thing in furtherance of any such conspiracy or conspiracies, and further deny that any such conspiracy ever existed outside of the fertile imagination of complainant.

XI.

Deny each and every allegation in Paragraph XXIII.

XII.

Deny each and every allegation in paragraph XXIV of complaint except that they admit that an action was filed as No. 122-229 in Chancery of New Jersey by and on behalf of The Howard-Vaughan Co., Inc., against Standard Oil Co. (New Jersey), Standard Oil Co. of New Jersey, General Motors Corporation, E. I. DuPont de Nemours & Co., Inc., et al to recover against said named defendants therein for the theft by them of the secret formula aforesaid, but specifically deny that the same was in any based or founded upon any conspiracy or fraud described or set forth in the Bill of Complaint herein, and allege that no conspiracy [31] or fraud such as is referred to in said paragraph XXIV of

the Bill herein is properly alleged or set forth in said Bill either in the said paragraph or elsewhere, and for that reason it is impossible for these defendants to further answer said paragraph.

XIII.

Answering Paragraph XXV, these defendants, drawing the Court's attention to the fact that no "irreparable losses, injuries and damages" are in any manner described, named or set forth therein or elsewhere in the Bill of Complaint, expressly deny that complainant has suffered any loss, injury or damage whatever by reason of anything in this paragraph or in the Bill set forth or alleged or attempted to be alleged therein, nor by reason of any act of any defendant herein named, and further specifically deny every allegation in said paragraph XXV.

XIV.

Deny, generally and specifically each and every allegation in paragraph XXVI of the complaint, and allege that complainant has never at any time prior to the filing of this action made any claim or statement such as that set forth in said paragraph XXVI. The facts concerning said meeting of October 6th, 1934, are that at that time the old Minute Book of said corporation had been lost and certain resolutions were proposed by said complainant and unanimously carried, reciting said loss and stating that in June, 1916, at the organization meeting of the corporation, the secret formula for "Vitagas",

the compound and process and all rights of complainant in and to said discovery or invention had been duly assigned to the corporation by him in consideration of the issuance to him of certain shares of the corporation's capital stock. The minutes of said meeting of October 6th, 1934, were signed by all the directors, including this complainant, and were introduced and received in evidence upon the hearing in action No. 120-704 in the Court of Chancery of New Jersey hereinabove described.

[32]

XV.

As a separate defense herein, these defendants allege that the Bill of Complaint herein does not state facts sufficient to constitute a cause of action against these defendants or any of them, and pray the benefit of this defense as though made by motion to strike.

XVII.

As a further and additional separate defense herein, they allege that this Court has no jurisdiction over the subject matter of the cause or causes of action attempted to be set forth in the Bill, and pray the benefit of this defense as though made by motion to strike.

XVII.

As a further and additional separate defense herein, they allege that this action is barred by the previous adjudication of the Court of Chancery of

New Jersey hereinbefore described, alleged and set forth, and pray the benefit of this defense as though made by motion to strike.

XIX.

As a further and additional separate defense herein, they allege that several distinct causes of action are improperly joined, in that the Bill attempts to set forth at least five different conspiracies with different defendants alleged to have conspired in each such "conspiracy", and pray the benefit of this defense as though made by motion to strike.

Wherefore these defendants pray that complainant take nothing by this action and that same be dismissed with prejudice and that defendants have such other and further relief as to the Court shall seem proper.

JAMES WESTERVELT

In Pro. Per. & as Attorney for
Defendants E. H. Archer &
The Howard-Vaughan Co.,
Inc.

440 19th St., Santa Monica, Calif.

State of California,
County of Los Angeles—ss.

James Westervelt, being duly sworn says that he is one of the answering defendants herein, that he has read the foregoing answer and that same is

true of his own knowledge except as to matters therein stated on information and belief and as to those matters he believes it to be true.

JAMES WESTERVELT

Subscribed and sworn to before me this 28 day of December, 1939.

FLORENCE A. BARTELS

Notary Public in and for the State of California,
County of Los Angeles.

[Endorsed]: Filed Dec. 30, 1939. [33]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR JUDGMENT ON
THE PLEADINGS

To Francis A. Howard, Complainant, & Calvin S. Mauk, Esq., His Attorney, 305 Continental Building, Los Angeles, California:

Please take notice that the defendants herein-below named will move this court, at the courtroom of Hon. Leon. R. Yankeich, Judge, on the second floor of the new Post Office & Federal Building, at Temple & Main Streets, Los Angeles, on Monday, January 15, 1940, at ten o'clock, (10.00) A. M., or as soon thereafter as counsel can be heard, for Judgment on the Pleadings herein. Said motion will be bases upon the Bill of Complaint and the verified Answer of the undersigned defendants on file herein.

This supplementary Notice of this Motion is served because the undersigned has learned since the former notice was prepared that Calvin S. Mauk, Esq., has been substituted as Attorney for complainant.

Dated January 4th, 1940.

JAMES WESTERVELT

Deft. in Pro. Per. & as Attorney
for defendants E. H. Archer
& The Howard-Vaughan Co.,
Inc.

440 19th Street, Santa Monica, Cal.
Tel. Santa Monica 21001

Authorities:

Cal. C. C. P. Sec. 1030;
Fed. Rules of Civil Procedure, Rule 64;
Act of June 19, 1934, c. 651, Secs. 1 & 2;
U. S. Code, Title 28, Secs. 724 & 725.

Service of copy of within Notice admitted this
5th day of Jany. 1940.

CALVIN S. MAUK

Atty. for Complainant

[Endorsed]: Filed Jan. 5, 1940. [34]

[Title of District Court and Cause.]

To Francis A. Howard, Complainant, & Calvin S.
Mauk, Esq., his Attorney, 305 Continental
Building, Los Angeles, California:

Please take notice that the defendants herein-
below named will move this Court at the Court-

room of Hon. Leon R. Yankwich, Judge of this Court, on the second floor of the new Post Office and Federal Building, at Temple & Main Streets, Los Angeles, on Monday, January 15th, 1940, at ten (10.00) A. M. or as soon thereafter as counsel can be heard, for Summary Judgment for defendants herein. Said Motion will be based on the Bill of Complaint and the verified answer herein and the Final Order of the Court of Chancery of New Jersey of May 4, 1938, a duly exemplified copy whereof is annexed hereto and served herewith upon you.

Dated, Los Angeles, California, January 4th, 1940.

JAMES WESTERVELT

Deft. in Pro. Per. & as Attorney
for Defts. E. H. Archer &
The Howard-Vaughan Co.,
Inc.

[Endorsed]: Filed Jan. 5, 1940. [35]

In Chancery of New Jersey

120-704

Between

FRANCIS A. HOWARD,

Complainant,

and

STANDARD OIL COMPANY (NEW JERSEY),
STANDAED OIL COMPANY OF NEW
YORK, GENERAL MOTORS *CORPORA-*
TIO, ETHYL GASOLINE CORPORATION,
THOMAS MIDGLEY, JR., CHARLES F.
KETTERING, THE HOWARD-VAUGHAN
CO., INC.

Defendants.

ON BILL, ETC.

ORDER DISMISSING BILL OF COMPLAINT

Defendant, The Howard-Vaughan Co., Inc., a corporation of the State of New York, having filed a petition in this cause on February 28, 1938, and a certain order to show cause having been made on said petition, returnable March 8, 1938, which said rule to show cause was brought on for hearing on March 15, 1938, and partially completed, and an order having been made by the court on the court's own motion on March 17, 1938, that the several affiants who made affidavits annexed to the bill of complaint herein and/or annexed to the petition aforesaid, and/or otherwise presented to this court on the part either of the complainant or of the said

defendant-petitioner, shall appear before this court at the said continuation of the said hearing to be had on March 29, 1938, and submit to cross-examination in respect to the several matters contained in their respective affidavits; and that the said complainant and the said defendant-petitioner, or their respective solicitors do cause the said several respective affiants to appear for that purpose at the time and place set forth for the said continuation of said hearing; and

It was further ordered that at the same time and place the said parties do produce and submit to the court the several matters of written evidence mentioned and referred to in said affidavits; and

It was further ordered that at the same time and place, the said parties, or either of them, may offer such further—testimony and/or other evidence as they may deem advisable, with reference to [36] the issue as to whether the right to institute and maintain action against the defendants named in the complainant's bill (other than the defendant Howard-Vaughan Co., Inc.) on the cause or causes of action mentioned and set forth in the said bill of complaint, inheres in the said complainant or in the said defendant Howard-Vaughan Co., Inc.; and

The hearing on the petition above mentioned and the rule to show cause thereon having been continued from March 29, 1938, to April 5, 1938, and the court, in accordance with the said order for cross-examination of March 17, 1938, having taken testimony thereon on April 5, 1938, and the hearing

not having been completed on that day and the court being of the opinion that the same should be continued for further testimony and hearing in accordance with the said order for cross-examination, and the hearing having been continued to a further date, to wit: April 12, 1938, on which day the taking of testimony was concluded;

And the court having considered the affidavits and the testimony of the various witnesses taken in open court, together with the various documents introduced in evidence, and the court having considered the arguments and the briefs of the respective solicitors, and James I. Bowers, Charles S. Mackenzie and James Westervelt, appearing for the petitioner, the Howard-Vaughan Co., Inc. a corporation of the State of New York, one of the defendants herein, and James S. Brown of Kealey and Gilfert, solicitors appearing for the complainant, Francis A. Howard, and the court having concluded the prayer of the petition of the Howard-Vaughan Co., Inc., a corporation of the state of New York should be granted;

It is thereupon, on this third day of May, 1938, on motion of James I. Bowers, solicitor for the petitioner, the Howard-Vaughan Co., Inc., a corporation of the State of New York, one of the defendants herein, ordered, adjudged and decreed that the prayer of the petition of the Howard-Vaughan Co., Inc., a corporation of the State of New York, be granted and that the petitioner, the Howard-Vau- [37] ghan Co., Inc., a corporation of

the State of New York, one of the defendants herein, is the owner of the secret formula for a chemical compound called the "Vitagas" described in the bill herein, and of the process for compounding same, and that the Howard-Vaughan Co., Inc., a corporation of the State of New York, has the sole right to maintain any action or proceeding based upon such ownership, and that the complainant, Francis A. Howard, has and has had no legal right for the filing of the bill of complaint herein as a stockholder of the said Howard-Vaughan Co., Inc., a corporation of the State of New York.

It is further ordered, adjudged and decreed that the bill of complaint herein be and the same is hereby dismissed as to all the defendants named in said bill of complaint, with costs to the petitioner, the Howard-Vaughan Co., Inc., a corporation of the State of New York.

It is further ordered, adjudged and decreed that the complainant, Francis A. Howard, be and he is hereby restrained and enjoined from bringing, prosecuting or maintaining any action in this court or in any court in this or in any other jurisdiction against the defendants mentioned in the bill of complaint, or any of them upon the cause of action set forth in the bill of complaint filed herein, or upon any cause of action based or founded upon any claim of ownership by said Francis A. Howard, of the aforesaid secret formula for a chemical compound called "Vitagas" described in the bill of complaint filed herein and the process for com-

pounding same; provided however, that nothing herein contained shall preclude the said complainant from applying to this court for a modification or vacation of the restraint herein contained upon due notice and upon proof of changed circumstances.

Respectfully advised

LUTHER A. CAMPBELL

C.

MALCOLM G. BUCHANAN

V.C.

A true copy.

EDW. L. WHELAN

Clerk

[Endorsed]: Service of copy of within Notice admitted. Calvin S. Mauk, Atty. for Complainant.

[Endorsed]: Filed Jan. 5, 1940. [38]

[Title of District Court and Cause.]

NOTICE OF MOTION AND PETITION TO
AMEND, AND MOTION TO AMEND AND
PETITION TO AMEND BILL OF COM-
PLAINT IN EQUITY

To James Westervelt, Defendant, in Propria Persona, and as Attorney for Defendants E. H. Archer and The Howard-Vaughan Co., Inc., a corporation; 440 19th Street, Santa Monica, California:

You and each of you, please take notice that the complainant Francis A. Howard, will,

Move the Court, in the above entitled cause and action, on Monday, January 15th, 1940, at ten (10:00) o'clock A. M., or as soon thereafter as counsel may be heard, to amend the bill of complaint in equity on file, by a petition and motion to amend said bill, upon the grounds as set forth in petition to amend said bill of complaint and said motion filed and served in above entitled cause and action.

Dated: Los Angeles, California, January 8th, 1940.

CALVIN S. MAUK

Solicitor for Complainant and Petitioner

Petition to Amend Bill of Complaint in Equity and Memorandum of Points and Authorities Filed Herewith in Support of Petition to Amend made a part hereof.

[Endorsed]: Filed Jan. 9, 1940. [39]

[Title of District Court and Cause.]

MOTION TO AMEND BILL OF COMPLAINT
IN EQUITY

Comes now Francis A. Howard complainant and petitioner, who by and through his counsel Calvin S. Mauk, in the above entitled cause and action:

Moves the Court, to amend the bill of complaint in equity, upon grounds as set forth in the petition to amend the bill of complaint in equity,

filed and served in above entitled cause and action, and attached hereto and made a part hereof.

Dated: Los Angeles, California, January 8th, 1940.

CALVIN S. MAUK

Solicitor for Complainant and Petitioner

Memorandum of Points and Authorities Filed Herewith in Support of Petition to Amend Bill of Complaint in Equity made a part hereof.

[Endorsed: Filed Jan. 9, 1940. [40]

[Title of District Court and Cause.]

PETITION TO AMEND BILL OF COMPLAINT IN EQUITY FOR INVALIDATION OF PATENT, INVALIDATION OF UNCONSTITUTIONAL CONTRACTS, CONSPIRACY AND FRAUD, ETC.

Comes now Francis A. Howard complainant in the above entitled cause and petitions the court and begs leave to amend the *the* bill of complaint in equity filed in the above entitled cause and action in equity, upon grounds as follows, to wit:

I.

That the bill of complaint in equity on file contains provisions for numerous and various fictitious named defendants, many of whom your petitioner and complainant have recently discovered their

correct names and addresses, each of said defendants would have to be made party defendants to this above entitled cause and action for the purpose of the above named court making a lawful and equitable determination in an adjudication of the above entitled matter.

II.

That the pleadings filed in the above cause by defendant James Westervelt in *Propria Persona* for himself and behalf of defendants E. H. Archer and The Howard-Vaughan Co., Inc., a corporation, particularly, the motion for summary judgment based upon the bill of complaint in equity, the verified answer of said defendant and for said defendants and the order dismissing bill of complaint in Chancery of New Jersey; the said motion for summary judgment and [41] order dismissing bill of complaint in Chancery of New Jersey in the State of New Jersey have no jurisdiction in the above entitled cause and action before the above named court; the complainant is not prosecuting the above entitled cause as a stockholder of The Howard-Vaughan Co., Inc., a corporation; the complainant is prosecuting the above entitled cause and action individually in behalf of complainant's constitutional rights which are granted to authors and inventors to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries, and complainant hereof,

has been denied and deprived of said exclusive right by and through conspiracy and fraud by the defendants and each of them in the above entitled cause, and complainant has further discovered since the filing of the bill of complaint in equity, numerous and various defendants and their correct names and addresses, who are named as fictitious named defendants, and further since the filing of the said bill of complaint in equity in above entitled cause, complainant has discovered a huge and gigantic conspiracy and fraud perpetrated and executed against complainant and discovery of said conspiracy and fraud was made by complainant on or about Wednesday, January 3rd, 1940, and the aforesaid named defendants and each of them, and the fictitious named defendants whose true and correct names and addresses have been discovered since the filing of the bill of complaint in equity in above entitled cause and action, have also confederated and participated in the conspiracy and fraud heretofore set forth in said bill of complaint in equity and also in the said huge and gigantic conspiracy and fraud discovered by complainant on or about Wednesday, January 3rd, 1940, and therefore, it is necessary that the said newly discovered fictitious named defendants whose true and correct names and addresses have been discovered by complainant will have to be made parties as defendants to the above entitled cause and action for the purpose of the above entitled court making a lawful [42] and equit-

able determination in an adjudication of the above entitled cause and action which would be impossible without making the said parties whose true and correct names and addresses have been discovered parties to the above entitled cause and action and having them brought in as defendants in the above entitled cause and action.

III.

That complainant has been a resident of the County of Los Angeles, State of California for more than one year, the last year past, and intends to always maintain his residence in Los Angeles County, State of California permanently, which complainant has done for several years past, and such residence is supported by numerous affidavits which are filed herewith in support of residence of complainant in Los Angeles County and the City of Los Angeles, State of California, and complainant at various times has been east on business matters and matters in litigation but has at all times maintained his business office and residence in Los Angeles County, State of California. (See, eight (8) affidavits in support of petition hereof and residence of Francis A. Howard complainant in California, made a part hereof.)

IV.

That complainant has not been in hiding as alleged by defendant, James Westervelt, who is appearing on the record in above entitled cause in propria persona and in behalf of defendants E. H.

Archer, and The Howard-Vaughan Co., Inc., a corporation, as their counsel of record, said allegation being made by said defendant in paragraph I of the answer to bill of complaint in equity filed in above entitled cause, and complainant denies that he is in hiding, and further states, that on Wednesday, January 3rd, 1940, that the so-called investigator for the said defendant, namely, Charles J. Siems, in behalf of himself and James Westervelt, defendant in the above entitled cause and action, called upon the complainant at the office of complainant at 342 Wilcox Building, City of Los Angeles, County of Los Angeles, State of California; said investigator, Charles J. Siems arriving at the said office of complainant at about [43] 9.15 A. M., and conversed with complainant Francis A. Howard until about 2.30 P. M., said date, and during said time there were several persons present who heard the conversation between the said Charles J. Siems and the said Francis A. Howard complainant, and at no time during the time that said Charles J. Siems was in said office talking with said Francis A. Howard did the said Charles A. Siems make any effort to serve the said Francis A. Howard with process of any kind, but he did however state that he knew where the said Francis A. Howard was at all times and he could serve him at any time. (See, affidavits of Francis A. Howard, Conrad S. Taylor and Adam J. Yacenda, filed herewith in support of petition hereof and made a part hereof.)

V.

That the questions involved in the above entitled cause and action are all matters over which no State Legislation or State Court have any jurisdiction, because the matters involved in said cause and action concern a conspiracy and fraud relative to patents issued by the United States Patent Office, Trade Marks, Copyrights, restraint of Trade and Commerce in Interstate Trade and Commerce, and unlawful price fixing in a monopolistic system against complainant contrary to the antitrust laws and other Federal Laws of the United States of America, which said conspiracy and fraud and the aforesaid huge conspiracy and fraud discovered by complainant on or about January 3rd, 1940, all of which involves said matters and complainant will upon the court granting leave to amend bill of complaint in equity, set the said matters in the amended bill of complaint in equity for the purpose of the court making a lawful and equitable determination in an adjudication of the above entitled cause and action, and by making the aforesaid newly discovered defendants parties to the proposed amended bill of complaint in equity.

VI.

That any corporation stock of the capital stock of The Howard-Vaughan Co., Inc., a corporation, which has been in any manner held for the credit of the complainant hereof for any purpose [44] whatsoever, is merely a stock juggling fraud in a con-

spiracy and fraud to defraud complainant of his discoveries and inventions and of his constitutional rights relative to said discoveries and inventions, and thereby through the said corporation stock that the defendant James Westervelt endeavors to paint a picture as to its value, which said value to complainant is nil, because the said defendant James Westervelt has made his brags to various people, that he did not need complainant in any action he might prosecute, and he would see to it, that complainant would never get a dime, and complainant knows without any question of doubt, that the said defendant James Westervelt has for a long time and does now dominate and rule the directors of The Howard-Vaughan Co., Inc., a corporation, and complainant has been so informed from a reliable source, and therefore, any pleading that the said defendant James Westervelt, might allege that complainant has been given corporation stock of the said corporation for anything or purpose whatsoever, the said defendant has created such a condition that the stock would have no value to complainant, but instead would serve the purpose of said defendant to defraud complainant of his discoveries and inventions without due process of law and thereby cause irreparable injuries and losses and damages to complainant, and unconstitutionally deprive complainant of his constitutional rights as are afforded to all authors and inventors under a constitutional right of the United States of America.

Wherefore, complainant prays and respectfully

begs leave of the court to amend the bill of complaint in equity and to file the proposed amended bill of complaint in equity.

Dated: Los Angeles, California, January 8, 1940.

CALVIN S. MAUK

Solicitor for Complainant

Memorandum of Points and Authorities filed herewith and made a part hereof.

Nine (9) affidavits filed herewith and made a part hereof. [45]

State of California,
County of Los Angeles—ss.

Francis A. Howard, being by me first duly sworn deposes and says: That he is the complainant in the foregoing and above entitled cause and action; that he has read the foregoing petition to amend bill of complaint in equity and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

FRANCIS A. HOWARD

Petitioner

Subscribed and sworn to before me this 9th day of January, 1940.

[Seal] EDITH W. OLMSTEAD

Notary Public in and for the County of Los Angeles,
State of California.

My Commission expires July 22, 1942.

[Endorsed]: Filed Jan. 9, 1940. [46]

[Title of District Court and Cause.]

NOTICE OF MOTION & MOTION TO DENY
AND DISMISS MOTION FOR SECURITY
FOR COSTS AND MOTION FOR JUDG-
MENT ON THE PLEADINGS FOR DE-
FENDANTS MAKING SAID MOTIONS

To James Westervelt, Defendant, in Propria Per-
sona, and as Attorney for Defendants, E. H.
Archer and The Howard-Vaughan Co., Inc., a
corporation; 440 19th Street, Santa Monica,
California:

Please take notice that the complainant Francis
A. Howard, will move the Court in the above en-
titled cause and action, on Monday, January 15th,
1940, at Ten (10:00) o'clock A. M., or as soon there-
after as counsel may be heard, for an order denying
and dismissing motions for security for costs and
for judgment on the pleadings as made by defend-
ants. Said Motion will be made at the Courtroom
of Honorable Leon R. Yankwich, Judge of the
above entitled court, and said motion will be based
upon the petition and motion to amend bill of com-
plaint in equity filed and served in above entitled
cause and action.

Dated: Los Angeles, California, January 8th,
1940.

CALVIN S. MAUK

Solicitor for Complainant and Petitioner

Petition to Amend Bill and Memorandum of
Points and Authorities filed herewith in support of
Petition to Amend Bill of Complaint made a part
hereof.

[Endorsed]: Filed Jan. 9, 1940. [47]

[Title of District Court and Cause.]

MOTION TO DENY AND DISMISS MOTION
FOR SECURITY FOR COSTS AND MO-
TION FOR JUDGMENT ON THE PLEAD-
INGS FOR DEFENDANTS MAKING SAID
MOTIONS

Comes now Francis A. Howard complainant and petitioner, who by and through his counsel Calvin S. Mauk, in the above entitled cause and action:

Moves the Court, that the Motions for security for costs and for judgment on the pleadings be denied and dismissed upon the grounds which is set forth in the petition to amend bill of complaint in equity and motion to amend said bill filed and served in above entitled cause and action.

Dated: Los Angeles, Calif., January 8th, 1940.

CALVIN S. MAUK

Solicitor for Complainant and Petitioner

Memorandum of Points and Authorities filed herewith in support of Petition to Amend Bill of Complaint made a part hereof, and said Petition to Amend Bill made a part hereof.

[Endorsed]: Filed Jan. 9, 1940. [48]

At a stated term, to wit: The September Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Divi-

sion of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 15th day of January in the year of our Lord one thousand nine hundred and *thirty* forty.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

This cause coming on for hearing (1) defendant's motion for security for costs; (2) defendant's motion for judgment on the pleadings; (3) motion of defendants James Westervelt, Inc., James Westervelt impleaded, E. H. Archer, and the Howard-Vaughan Co., Inc., for summary judgment; (4) motion of the plaintiff to amend Bill of Complaint; (5) motion of the plaintiff to deny and dismiss motion for summary judgment; and (6) motion of the plaintiff to dismiss motion of defendants for security for costs; C. S. Mauk, Esq., appearing as counsel for the plaintiff; James Westervelt, Esq., appearing in propria persona, and as attorney for E. H. Archer, the Howard-Vaughan Co., Inc. no Court reporter being present:

Attorney Mauk asks time to reply to affidavit sworn to January 11, 1940, ruling being deferred to ascertain if reply affidavit is required.

Attorney Westervelt presents motion (3) of the defendants, James Westervelt, Inc., James Westervelt, impleaded, E. H. Archer, and Howard-Vaughan Co., Inc., for summary judgment. Attor-

ney Mauk replies and asks permission to file the Amended Bill attached to his motion. Attorney Westervelt argues in rebuttal. The Court makes a statement and analyses the said Bill and finds no requisite diversity of citizenship or questions arising under the patent law of the United States. The motion for Summary Judgment in favor of defendants is granted on the grounds that the action is foreclosed by the New Jersey Court judgment. Leave to amend the Complaint is denied.

Defendant's (1) motion for security for costs is dismissed; Motion (5) of the plaintiff to deny and dismiss motion for summary judgment is denied; and Motion (6) of the plaintiff to dismiss motion of defendants for security for costs is granted as question has become moot.

Attorney Westervelt will prepare order under the Rule. [49]

In the District Court of the United States, Southern
District of California, Central Division

Civil Action

No. 634 Y Civil

FRANCIS A. HOWARD,

Complainant,

vs.

E. H. ARCHER, THE HOWARD-VAUGHAN
CO., INC., a corporation, HOWARD F.
ZAHNO also known as FRANCIS Z. HOW-
ARD, JAMES H. MOYER, MARY M.
VAUGHAN, JAMES WESTERVELT,
CHARLES S. MACKENZIE, THOMAS
MIDGLEY, JR., JAMES I. BOWERS, M. J.
CRONIN and CHARLES LEVY, and ficti-
tious named defendants,

Defendants.

JUDGMENT OF DISMISSAL

This matter being opened to the court on January 15, 1940, in court room No. 3, Honorable Leon R. Yankwich, Judge presiding, by James Westervelt, Esquire, attorney for himself in propria persona and for defendants E. H. Archer and The Howard-Vaughan Co., Inc., a corporation, and the matter coming on on said day upon the motions of said defendants for security for costs, for judgment on the pleadings and for summary judgment, and upon the motions of the complainant for leave to amend his

bill of complaint herein, supported by his petition to amend the same, and motions to deny the several motions of defendants, and the court having heard the arguments of the said James Westervelt, Esquire, counsel for the defendants appearing and of Calvin S. Mauk, Esquire, counsel for the complainant, and the court being satisfied and adjudging:

(1) That no cause of action cognizable in this court or in any court of the United States is set forth or stated in said bill of complaint;

(2) That no diversity of citizenship between the parties [50] hereto exists which would give this court or any court of the United States jurisdiction hereof;

(3) That the cause of action attempted to be set forth in the bill of complaint herein is barred by a previous adjudication of the Court of Chancery of New Jersey in action No. 120-704 in said court, wherein complainant herein was complainant and defendants The Howard-Vaughan Co., Inc. and Thomas Midgley, Jr. were among the defendants, in and by which it was adjudged by said Court of Chancery that complainant was not and is not the owner of said cause of action but that the same was owned and is owned by the defendant herein, The Howard-Vaughan Co., Inc., which said order and decree enjoined the complainant herein from bringing any action based upon a claim by him of ownership of said cause of action; and therefore that

(4) It would be and will be impossible for complainant to frame an amended bill of complaint based on said cause of action herein; and the court thereupon having found and ruled that the motion for security of costs had become a moot question and should be denied;

It is thereupon, on motion of the said James Westervelt, Esquire, Ordered, Adjudged and Decreed, that the defendants E. H. Archer, The Howard-Vaughan Co., Inc. and James Westervelt have judgment against the complainant herein, that said complaint be dismissed without leave to amend, and that the several motions of the complainant herein be denied and that said defendants have and recover from the complainant their costs herein to be taxed. Costs taxed at \$30.50.

Dated: at Los Angeles, California, January 17th, 1940.

LEON R. YANKWICH

Judge.

Judgment entered Jan. 17, 1940. Docketed Jan. 17, 1940. Book C. O. 2 Page 490.

R. S. ZIMMERMAN,

Clerk

By LOUIS J. SOMERS,

Deputy

[Endorsed]: Filed Jan. 17, 1940. [51]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO UNITED STATES
CIRCUIT COURT OF APPEALS, NINTH
CIRCUIT.

Notice Is Hereby Given: That the complainant Francis A. Howard does hereby give Notice that he appeals from the judgment rendered by the District Court of the United States, Southern District of California, Central Division, to the United States Circuit Court of Appeals, Ninth Circuit, San Francisco, California, said appeal is taken from the judgment rendered in the above entitled cause and action, and appeals from the judgment of dismissal, denial of leave to amend bill of complaint in equity, and that said defendants have and recover from complainant their costs herein to be taxed, and appeals from the whole and entire judgment, which was entered on the 17th day of January, 1940.

Dated: February 13, 1940.

CALVIN S. MAUK,
Solicitor for Complainant.

Copy mailed Feb. 16, 1940 to James Westervelt,
Esq., 416 W. 8th St., Room 514, Los Angeles, Cal.

R. S. ZIMMERMAN,
Clerk,

By E. L. S.

Deputy Clerk

[Endorsed]: Filed Feb. 15, 1940. [53]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

The appellant in the above entitled cause and action in connection with appeal herein, presents and files therewith assignment of errors, as to which matters and things appellant states that the orders and decree of judgment entered in the above entitled cause and action are erroneous, to wit:

I.

The court erred, in dismissing bill of complaint in equity, upon the ground, that no cause of action cognizable in above entitled court or in any court of the United States, as set forth in the making, filing and entering of the judgment made and entered on January 17, 1940.

II.

The court erred, in dismissing bill of complaint in equity, upon the ground, that no diversity of citizenship between the parties exists which would give the court or any court of the United States jurisdiction, as made and entered in the judgment on January 17, 1940.

III.

The court erred, in dismissing the bill of complaint in equity, upon the ground, that the cause of action attempted to be set forth in the bill of complaint is barred by a previous adjudication of [55] the Court of Chancery of New Jersey in action No.

120-704 in said Court, as made and entered in the judgment on January 17, 1940.

IV.

The court erred, in dismissing bill of complaint in equity, upon the ground, that it would be impossible for complainant to frame an amended bill of complaint based upon said cause of action, as made and entered in the judgment on January 17, 1940.

V.

The court erred, in dismissing bill of complaint in equity, in denying leave to amend and to file proposed amended bill of complaint in equity, in making and entering the judgment on January 17, 1940, that said complaint be dismissed without leave to amend.

VI.

The court erred, in ruling no jurisdiction, and then holding that said defendants as mentioned in the aforesaid judgment on January 17, 1940, that said defendants have and recover from complainants their costs herein to be taxed.

Wherefore, complainant-appellant respectfully prays that the said orders and decree of judgment of the said District Court of the United States be reversed and that the matter be remanded to the said District Court with an order that appellant be allowed to file proposed amended bill of complaint in equity and proceedings be had thereunder in said District Court.

Dated: Los Angeles, California, February 21, 1940.

CALVIN S. MAUK,
Solicitor for Appellant.

[Endorsed]: Filed Mar. 13, 1940. [58]

[Title of District Court and Cause.]

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 60, inclusive, contain full, true and correct copies of Bill of Complaint; Substitution of Counsel; Answer of Defendants; Notice of Motion for Judgment on the Pleadings; Notice of Motion for Summary Judgment with Order Dismissing by Chancery Court of New Jersey; Notice of Motion & Petition to Amend, & Motion to Amend & Petition to Amend Bill of Complaint; Notice of Motion & Motion to Deny & Dismiss Motion for Security for Costs & Motion for Judgment on the Pleadings; Order for Judgment; Judgment of Dismissal; Notice of Appeal; Bond on Appeal; Assignments of Error; Designation of Contents of Record on Appeal and Affidavit of Service of Statement of Points and Designation of Documents, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the fore-

going record amount to \$10.10, and that said amount has been paid me by the Appellant herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 23rd day of March, A. D. 1940.

[Seal]

R. S. ZIMMERMAN,

Clerk

By EDMUND L. SMITH

Deputy Clerk.

[Endorsed]: No. 9480. United States Circuit Court of Appeals for the Ninth Circuit. Francis A. Howard, Appellant, vs. E. H. Archer, The Howard-Vaughan Co., Inc., a corporation, Howard F. Zahno, also known as Francis Z. Howard, James H. Moyer, Mary M. Vaughan, James Westervelt, Charles S. Mackenzie, Thomas Midgley, Jr., James I. Bowers, M. J. Cronin and Charles, Levy, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed, March 25, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

Civil Action No. 9480

FRANCIS A. HOWARD,

Appellant,

vs.

E. H. ARCHER, THE HOWARD-VAUGHAN
CO., INC., a corporation, et al etc.,

Appellees.

STATEMENT OF POINTS.

Francis A. Howard, Appellant in the above entitled matter, presents points as follows:

Point 1.

That the Federal Court has jurisdiction of the above entitled cause, on the ground that a federal question is involved, wherein the inventions and discoveries belonging to appellant have been infringed upon by and through patents of certain defendants as set forth in bill of complaint in equity which shows that an infringement has been committed against discoveries and inventions of appellant.

Point 2.

That it is not necessary to show a diversity of citizenship in above entitled matter because the question of infringement relative to patents is a matter within the jurisdiction of the District Court of the United States.

Point 3.

That the action in the District Court is not barred by the previous adjudication of a State Court in the State of New Jersey, as it has no bearing on the federal question of infringement relative to patents and the discovery of fraud as alleged in the record which was discovered on January 3, 1940.

Point 4.

That complainant would be able to frame an amended bill of complaint in equity, based upon the infringement relative to patents, and also the discovery fraud on January 3, 1940, and also upon the provisions of the bill of complaint in equity providing for an amendment to bring in the fictitious named defendants.

Point 5.

That to deny leave to amend a bill of complaint in equity is a denial of due process of law, and in proceeding in equity such as the case at bar, a federal court in equity has jurisdiction over an infringement relative to patents and over fraud as set forth in the record.

Point 6.

That the court in ruling no jurisdiction had no jurisdiction to render a judgment that the defendants have and recover from complainant their costs and to be taxed for same.

Wherefore, appellant respectfully submits statement of points herewith and prays the Honorable

Justices of the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the order and decree of judgment of the District Court below, and that the matter be remanded to the said District Court and that appellant be allowed to file proposed amended bill of complaint in equity and that proceedings be held thereunder in said District Court.

Dated: Los Angeles, California, February 21, 1940.

CALVIN S. MAUK

Solicitor for Appellant.

[Endorsed]: Filed Mar. 25, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL

To Clerk of the Above Named Court. The Complainant and Appellant Will Rely Upon, and Hereby Designates the Following Parts of the Record on Appeal.

1. Bill of Complaint.
2. Notice of Motion for judgment on Pleadings as made by answering defendants.
3. Notice of Motion for Summary Judgment as made by answering defendant.
4. Order dismissing by Chancery Court of New Jersey (copy of said order as filed by answering defendants).

5. Notice of Motion and Motion to Amend Bill of Complaint in Equity.

6. Petition to Amend Bill of Complaint in equity for Invalidation of Patent.

7. Answer of Defendants for answering defendants.

8. Notice of Motion and Motion to deny and dismiss Motion for summary judgment for Defendants making said motion.

9. Motion to deny and dismiss Motion for Summary judgment for defendants making said Motion.

10. Minute order by the Court dismissing Bill of Complaint.

11. Judgment made and entered by the District Court on January 17th, 1940.

12. Notice of Appeal.

13. Assignment of errors.

14. Statement of Points.

CALVIN S. MAUK

Solicitor for Complainant and Appellant.

[Endorsed]: Filed Mar. 25, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

United States of America

State of California

County of Los Angeles—ss.

C. S. Mauk, being first duly sworn says. That affiant is a citizen of the United States, a resident

of the County of Los Angeles, that affiant is over the age of eighteen and is not a party to the within and above entitled action, that affiant's business address is 408 South Spring Street in the city and county of Los Angeles, State of California, that on the 21st day of March 1940 affiant served the within Designation of Record on Appeal, in said action, by placing a true copy thereof in an envelope addressed to the Attorney of record as follows; James Westervelt, Attorney at Law 440 19th Street, Santa Monica, California, and *bt* then sealing said envelope and depositing the same, with postage thereon fully prepaid in the United States Post Office at Los Angeles, California where is located the residence of the Attorney for the persons by and for whom said service was made. That there is a delivery service by United States mail at the place so addressed, or there is a regular communication by mail between the place of mailing and the place so addressed.

C. S. MAUK

Subscribed and sworn to before me this 21st day of March 1940.

[Seal]

JOSEPH C. D. ROSS

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Mar. 25, 1940. Paul P. O'Brien, Clerk.